

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243

October 4, 2000

Opinion No. 00-149

Memphis School District, Validity of 1970 Private Acts, Ch. 30

QUESTION

Whether the Secretary of State's certification that 1970 Private Acts, Chapter 340, was inoperative and did not go into effect is incorrect in light of the fact (1) that the bill contains no requirement of a referendum and (2) that the bill would not need to require a referendum even in a Home Rule county because the Memphis School District is not subject to Home Rule limitations.

OPINION

This Office finds a strong argument in favor of the correctness of the Secretary of State's certification of the invalidity of 1970 Private Acts, Chapter 340. Whether the certification should be declared correct, however, is for a court of competent jurisdiction to decide.

ANALYSIS

In a recent opinion,¹ this Office stated that 1970 Priv. Acts, Ch. 340 is void and never became effective. The basis for this conclusion was the Secretary of State's certification to this effect.²

The Secretary of State has a statutory duty to send a certified copy of every act passed by the General Assembly which is private or local in form or effect to the presiding officer of the body having jurisdiction to approve or disapprove. Tenn. Code Ann. § 8-3-201. Within a certain time frame, the Secretary must then certify results of any action or inaction of the appropriate governing body. Tenn. Code

¹ *Op. Tenn. Atty. Gen.* No. 00-142 (September 11, 2000). Neither in that opinion nor in the present opinion does this Office express any view about the validity of any past actions of the Memphis Board of Education.

² The Secretary of State's certification reads as follows:

This is to certify that according to the official records in this office, House Bill No. 1993, which is Chapter No. 340 of the Private Acts of 1970, was rejected or disapproved or not concurred in by the proper authorities and is therefore not operative and not in effect

Ann. § 8-3-202. Chapter 340 is local in effect, and from the face of the Secretary's certification, it may be inferred that he discharged his duty as he understood it.

State officials are presumed to know the law and do their duty. *See generally Burns v. Duncan*, 23 Tenn. App. 374, 133 S.W.2d 1000, 1006 (1939). This presumption is well-established. Therefore, this Office concludes that whether the Secretary of State's certification on a thirty-year-old private act was correct is for a court to decide.

Furthermore, from our analysis of this private act, we conclude that there is a strong argument that the Secretary of State's certification was correct. Under Tenn. Const. Art. XI, § 9, an act passed by the General Assembly that is private or local in form or effect will be void unless the act's terms require the approval by a two-thirds vote of the local legislative body of the municipality or county, or require approval in an election by a majority of those voting in the election in the municipality or county affected. Tenn. Const. Art. XI, § 9 limitations apply to counties and municipalities and do not apply to special school districts.³

Because the Memphis City School System is a special school district,⁴ the constitutional requirement of local approval would not apply to Chapter 340 if this private act affected only the special school district and not the municipality or county in which it was located. *Perritt v. Carter*, 204 Tenn. 611, 613, 325 S.W.2d 233 (1959). In this instance, however, the act affects the county and the municipality as well as the special school district. The act places duties on specific county and city officials, and it directs how the county and city are to use certain funds. *See 1970 Private Acts, Ch. 340, § 7.*⁵ Thus, under this analysis, Tenn. Const. Art. XI, § 9 required a referendum, which the Secretary of State's certification recognized as not having occurred.

Because officials are presumed to know the law and to do their duty and because this Office has found a strong argument that 1970 Priv. Acts, Ch. 340 was subject to the referendum requirements of Tenn. Const. Art. XI, § 9, this Office adheres to its previous opinion.

³ *See Op. Tenn. Atty. Gen.* 96-055 (March 27, 1996).

⁴ 1868-69 Priv. Acts, Ch. 30. *See Board of Education of Memphis City Schools v. Shelby County*, 207 Tenn. 330, 362, 339 S.W.2d 569 (1960).

⁵ Section 7 reads in pertinent part as follows:

[S]aid amount shall be paid by the Secretary of the Shelby County Election Commission to the Comptroller of the City of Memphis and by him added to the funds theretofore authorized by the Legislative Council of the City of Memphis to be paid to the [Memphis] Board of Education Such funds shall be earmarked for education within . . . the City of Memphis and shall be in addition to all other funds, . . . authorized and/or paid over to the Memphis City Schools,

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

KATE EYLER
Deputy Attorney General

Requested by:

The Honorable Barbara Cooper
State Representative
202 War Memorial Bldg.
Nashville, TN 37243